



STATE OF CALIFORNIA

**STATE****BOARD OF EQUALIZATION**

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August 20, 1993

RE: PROPERTY TAX RULE 462.5

Dear Mr. :

Our Legal Department has, pursuant to your written request dated August 4, 1993, reviewed this matter anew. Your letter provided the following facts: The City of Santa Cruz wishes to purchase your clients', , vacant CC (Community Commercial) zoned land which consists of two contiguous parcels: APN's and . In the event the sale to the City is consummated, your clients wish to purchase a multi-unit residential (3-9 units) complex as "replacement property". Since the zoning of the property that the City wishes to purchase from your clients allows a multi-unit residential use, your clients wish to transfer the assessment for property tax purposes on that vacant property to the land value only of the new multi-unit residential replacement property. The have inquired whether such multi-unit residential replacement property (with respect to the land value only) would conform to the guidelines regarding similar function and utility in Rule 462.5. For the reasons specified below, we are unable to conclude that vacant land and multi-unit residential property are "comparable" within the meaning of Rule 462.5 and Revenue and Taxation Code section 68.

LEGAL ANALYSIS

Rule 462.5, subdivision (c) specifies that replacement property "shall be deemed comparable to the replaced property if

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it is similar in size, utility, and function." Subsection (c)(1) further specifies that property is similar in function if the replacement property is subject to "similar governmental restrictions, such as zoning." Your letter discusses the fact that the Community Commercial District's purpose is, in part, "...To provide locations throughout the community for a variety of commercial and service uses for residents of the City and the region which promote the policies of the General Plan to encourage a harmonious mixture of a wide variety of commercial and residential uses..."(Ordinance No. 93-21, Part 8, sec.24.10.700). In addition, Part 8, sec.24.10.730, Paragraph 1, Item s, states that "3-9 multi-family units..." are an allowed use subject to approval of a use permit and possibly other requirements of the City Code.

Under Rule 462.5, subdivision (c)(1), your clients' proposed multi-family unit dwellings could be considered similar in function due to the fact that the replacement property would be subject to similar governmental restrictions, i.e., zoning, as the property to be replaced.

However, subdivision (c)(2) of Rule 462.5 specifies that property is similar in size and utility "only to the extent that the replacement property is, or is intended to be, used in the same manner as the property taken". It then provides specific and distinct examples, including multi-family residential other than duplexes and including vacant. The facts presented in this matter show that there are substantial differences between the proposed replacement property and the property to be replaced in that the property that your clients wish to sell is vacant CC (Community Commercial) zoned land and the replacement property will be used as multi-family residential units. Thus, the properties are not similar in size and utility for purposes of subdivision (c)(2).

In addition, according to Rule 462.5, subdivision (c)(2)(A), "A replacement property or any portion thereof used or intended to be used for a purpose substantially different than the use made of the replaced property, shall to the extent of the dissimilar use be considered not similar in utility." In the case at hand, it is clear that the replacement property will be used for a purpose substantially different than the use made of the replaced property. "To the extent that replacement property, or any portion thereof, is not similar in function, size and utility, the property, or any portion thereof, shall be considered to have undergone a change in ownership". (Rule 462.5, subdivision (c)(3)).

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As you can see, Rule 462.5 does not provide for the possibility of transferring the assessment for property tax purposes on the property which your clients wish to sell to the City to the multi-unit replacement property which your clients wish to buy. Regardless of the Community Commercial District's purpose, vacant land and multi-family residential property are not "comparable" within the meaning of Rule 465.2 and Revenue and Taxation Code section 68. Thus, if the sale is consummated and the        acquire the multi-unit residential property or properties, the multi-unit residential property or properties will have undergone a change in ownership.

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusions stated above.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

*/s/ Luma G. Serrano*

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Staff Counsel

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precednt/emdomain/93002.lgs

cc: Hon. Robert C. Petersen  
Santa Cruz County Assessor  
Mr. John Hagerty, MIC:63  
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